

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6301

PETITION OF ROBERTO ESCOBAR

(Hearing held October 7, 2009)

OPINION OF THE BOARD

(Effective date of Opinion, October 29, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b). The existing two-story addition requires a variance of 4.82 feet as it is within 2.18 feet of the side lot line. The required side lot line setback is seven (7) feet.

The subject property is Lot 2, Block 9, Viers Mill Village Subdivision, located at 4314 Fernhill Road, Silver Spring, Maryland, 20906, in the R-60 Zone (Tax Account No. 01165577).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The existing two-story addition requires a variance from the northern side yard boundary.
2. The petitioner testified that prior to the construction of the two-story addition, he observed the locations of other additions in his neighborhood and that based upon his observations he built his addition using the locations of those structures. The petitioner testified that the addition was built before he received a building permit and that he was unaware of what the required setbacks were for his property. The subject property is 8,198 square feet. See Exhibit No. 4 [topographic and house location survey].
3. The petitioner testified that the addition was built in the section of his lot that had the largest buildable area and that could accommodate new construction. The petitioner testified that the property's eastern side yard is smaller in total area than the western side yard and that the rear yard has an existing deck. The petitioner testified that the shape of his lot is angled at its southwest corner. See Exhibit No. 9 [zoning vicinity map].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the subject property is not constrained by either its shape or its dimensions and that the lot has no exceptional topographical or other extraordinary conditions that are peculiar to the property. The Board finds that the factors cited by the petitioner do not create a zoning reason for the grant of a variance and that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. *Carney v. City of Baltimore*, 201 Md. 130, 93 A.2d 74 (1952).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 4.82 feet from the required seven (7) foot side lot line setback for the existing two-story addition is denied.

The Board adopted the following Resolution:

Board member David K. Perdue was necessarily absent and did not participate in this Resolution. On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 29th day of October, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.